

**Before the
Federal Communications Commission
Washington, D. C. 20554**

Moffatt Properties Leasing LLC
Owner of Antenna Structure No. 1212292
Tupelo, Mississippi

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File Number EB-02-OR-129
NAL/Acct.No. 200232620005
FRN 0006-2670-41

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 24, 2002

By the Enforcement Bureau, New Orleans Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Moffatt Properties Leasing LLC ("Moffatt"), owner of antenna structure number 1212292, willfully violated Section 17.4(g) of the Commission's Rules ("Rules")¹ by failing to display the Antenna Structure Registration ("ASR") number on its antenna structure near Tupelo, Mississippi. We conclude that Moffatt is apparently liable for a forfeiture in the amount of two thousand dollars (\$2,000).

II. BACKGROUND

2. On May 15, 2002, an agent from the FCC Enforcement Bureau's New Orleans Office inspected antenna structure number 1212292 and observed that the ASR number was not posted on or near the tower or anywhere on the property. The agent interviewed one of the owners of Moffatt, Mrs. Chuck Moffatt, who admitted that they owned the tower and that they had failed to post the tower's ASR number.

III. DISCUSSION

3. Section 17.4(g) of the Rules requires the ASR number to be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. The antenna structure was observed on May 15, 2002, and no ASR number was posted.

4. Based on the evidence before us, we find that on May 15, 2002, Moffatt willfully² violated

¹ 47 C.F.R. § 17.4(g).

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious

Section 17.4(g) of the Rules by failing to post the ASR number.

5. Section 1.80(b)(4) of the Rules³ does not establish a base forfeiture amount for failure to post the ASR number.⁴ The Commission has determined, however, that an appropriate base forfeiture amount for failure to post the ASR number is \$2,000 per violation.⁵ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, and any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Considering the entire record and applying the factors listed above, this case warrants a \$2,000 forfeiture.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁸ Moffatt Properties Leasing LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of two thousand dollars (\$2,000) for willful violation of Section 17.4(g) of the Rules.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,⁹ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Moffatt Properties Leasing LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FRN and NAL/Acct. No. referenced in the letterhead above.

9. The response, if any, must be mailed to Federal Communications Commission, Office of the

and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ 47 C.F.R. § 1.80(b)(4).

⁴ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“Forfeiture Policy Statement”), 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999). The *Forfeiture Policy Statement* states that “...any omission of a specific rule violation from the ...[forfeiture guidelines]...should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

⁵ *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁹ 47 C.F.R. § 1.80.

Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced in the letterhead above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

12. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by regular mail and Certified Mail Return Receipt Requested to Moffatt Properties Leasing LLC at 1960 McCullough Blvd., Tupelo, Mississippi 38801.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins
District Director, New Orleans Office
Enforcement Bureau

¹⁰ See 47 C.F.R. § 1.1914.